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Attorneys for Defendant MICHAEL L. PHILPOT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NORTH AMERICAN COMPANY FOR LIFE)
AND HEALTH INSURANCE,)

Plaintiff,

v.

MICHAEL L. PHILPOT, an individual,
VIRGINIA B. HIRSCH, an individual, JOHN
B. KUYKENDALL, an individual, RENE
ALEJANDRO LACAPE, an individual C.
RICHIE MCNAMEE, an individual and
HECTOR PAEZ VALDEZ, an individual,

Defendants.

Case No. 08 CV 0270 BEN NLS

**DEFENDANT MICHAEL PHILPOT'S
REQUEST FOR AN EARLY
NEUTRAL EVALUATION
CONFERENCE AND/OR STATUS
CONFERENCE**

Complaint Filed: February 13, 2008
Trial Date: None Set

Defendant Michael Philpot, hereby requests that the Court schedule and conduct
a Status Conference in this matter.

Pursuant to Local Rule 16.1(c) an Early Neutral Evaluation or Status
Conference usually is held within 45 days after filing of a response to a Plaintiff's Complaint.
In this case, Defendant Michael Philpot filed his initial response (by way of an FRCP 12(b)(6)
motion) on or about June 13, 2008. That motion is currently under submission.

1 Defendant Michael Philpot believes that it is in the interest of efficient case
2 management and judicial economy that a Status Conference be held in this case so that the
3 parties can discuss case scheduling. Defendant Michael Philpot believes that this case will
4 require voluminous and complex discovery, and wishes to discuss and/or set discovery
5 parameters and/or protocol in this matter forthwith.

6 The following is a brief summary of the background facts and issues in this
7 matter for the Court's consideration in deciding upon Defendant Michael Philpot's request for
8 a Status Conference:

9 Plaintiff North American Company for Life and Health Insurance ("North
10 American") sued Michael Philpot and others for Unfair Competition under California
11 Business and Professions Code section 17200, Breach of Contract, Breach of Covenant of
12 Good Faith and Fair Dealing, Fraud, Negligence, Unjust Enrichment, Violation of 18 U.S.C.
13 section 1962(c) - Civil RICO Declaratory Relief, and Accounting. The alleged "wrong"
14 underlying each and every cause of action of the Complaint is for a scheme of "paying secret
15 rebates and/or advancing premium payments." Defendant, Michael Philpot's 12(b)(6) Motion
16 argues that under California Proposition 103, rebating of commissions by insurance agents or
17 brokers were made fully legal and in fact were encouraged.

18 Specifically, Plaintiff alleged that Defendant Michael Philpot was a general
19 insurance agent for North American, licensed in the State of California and sold North
20 American insurance products, specifically, Universal Life or "UL" Policies. Plaintiff alleged
21 that Defendant Michael Philpot offered secret rebates and/or advanced premium payments on
22 behalf of potential insureds to North American and other insurance companies in exchange
23 for the application of life insurance policies. Plaintiffs allege that the individuals purchasing
24 these policies had no intention of maintaining the policies for more than 1 year. Plaintiff
25 alleges that such policies were designed to persist more than 1 year. North American claimed
26 that after Defendant Michael Philpot collected the up-front sales commissions and bonuses,
27 the policies lapsed with significant negative account values within 3 years of their issue, long
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1 before collected premiums cover the costs and expenses associated with these policies
2 incurred by North American.

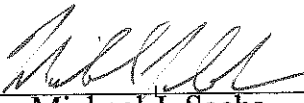
3 North American alleged that this process is illegal. However, Defendant
4 Michael Philpot contends that at best, Plaintiff has alleged only a breach of contract. This is
5 because up-front payment of these premiums is not unlawful under California Proposition
6 103. Moreover, Michael Philpot will show that North American was aware of, complicit in,
7 and used to its advantage, the actions of which it now complains.

8 Michael Philpot intends to file a cross-complaint against North American
9 alleging various claims for unfair business practices as a result of North American's efforts to
10 thwart his legal and proper efforts with respect to the sale of life insurance.

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12 Dated: July 30th, 2008

Respectfully Submitted,

13 **CALLAHAN & BLAINE, APLC**

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15 By: 
16 Michael J. Sachs

17 Attorneys for Defendant, MICHAEL L. PHILPOT
18 email: michael@callahan-law.com
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CERTIFICATE OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. I am employed in the office of a member of the bar of this Court at whose direction service was made. My business address is Callahan & Blaine, APLC, 3 Hutton Centre, Ninth Floor, Santa Ana, California 92707.

On July 30, 2008, I electronically filed the following document with the Clerk of the Court using the CM/ECF system, which sent electronic notification of such filing to all other parties appearing on the docket sheet as listed below:

DEFENDANT MICHAEL PHILPOT'S REQUEST FOR AN EARLY NEUTRAL EVALUATION CONFERENCE AND/OR STATUS CONFERENCE

Miles Michael Cooley mcooley@reedsmith.com

Raymond A. Greenberg raylaw43@msn.com

M. Andrew Schneider aschneider@tahlaw.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 30, 2008 at Santa Ana, California.



Jane M. Jones
email: jjones@callahan-law.com

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